

Change of Customer Number and Address

Please note that this application should now be associated with Customer Number 20,551, at the address for that Customer Number. The undersigned is already an attorney of record in this case; he has simply changed firms.

REMARKS

Applicants express their appreciation to the Examiner for considering the application.

In the Office Action, claims 1-4, 6-9, and 11-16 were rejected under Section 102 in view of U.S. Patent Application Publication No. US2002/0038339 by Xu ("Xu"). Claims 10 and 17 were rejected under Section 103 in view of Xu combined with U.S. Patent No. 6,262,987 to Mogul ("Mogul").

For at least the reasons explained below, all rejections should be withdrawn.

No *Prima Facie* Case Was Made

All of the claim rejections cite Xu. Indeed, all of the rejections under Section 102 cite no reference except Xu. But careful consideration of the documents and dates involved reveals that the rejections actually rely on the provisional application underlying Xu, namely, provisional application no. 60/231,230 filed September 8, 2000 ("Xu Provisional").

The Examiner acknowledged this reliance on the Xu Provisional by highlighting the provisional priority data on the front page of the copy of Xu supplied with the Office Action.

The present application claims priority to three provisional applications, including provisional application no. 60/273,598 filed March 6, 2001 (" '598 Provisional"). Applicants and Assignee respectfully submit that support for at least each of the present independent claims is found in the '598 Provisional.

Thus, for purposes of the present Response the pertinent dates are:

Xu Provisional: September 8, 2000

'598 Provisional: March 6, 2001

Xu: August 16, 2001

Accordingly, no *prima facie* case for rejection has been made, because the rejections cite a reference (Xu) whose date is later than a date to which the present application is entitled. The Office Action erred by effectively giving the Xu reference an earlier date than the date to which it has been shown to be entitled, and then relying on that earlier date to reject the claims.

Even though the rejections actually rely on the Xu Provisional rather than Xu, no copy of the Xu Provisional was supplied with the Office Action. No citations to the Xu Provisional were supplied. If the Examiner wishes to rely on the Xu Provisional in making rejections, then a copy of the Xu Provisional, and specific citations to the pertinent portions of the Xu Provisional, must be supplied.

However, before citing the Xu Provisional the Examiner should first consider the shortcomings of Xu as a reference, as explained below.

Xu's Shortcomings

The present invention teaches a distinction between the status of a server and the status of a path or connection to a server. In the '598 Provisional, one finds discussion both of servers and discussion of paths or connections to servers. As just one example, '598 Provisional claim 1 involves "determining that at least one candidate DNS server and connection are operating reliably; and sending the domain name resolution request to a candidate DNS server over a connection which is determined to be operating reliably".

This distinction between servers and paths or connections is reflected in the claims presently under examination. For instance, independent claim 1 refers not to the status of a server but instead to "the status of a path to the server". Claim 8 likewise refers to a "reliable connection component being in a path to a server", and claim 13 includes "selecting an IP address based on connection component status" when "multiple connections to a web server are potentially available."

By contrast, paragraph 0194 of Xu is focused on server status. It refers to unavailability of the end server, and it refers to a specific service IP address. It expressly states that fail-over management involves directing the packet to an available server. In short, it fails to acknowledge

the distinction between server status and path or connection status, much less to teach aspects of the present invention which involve path or connection status rather than server status.

Paragraph 0195 of Xu does move slightly beyond a focus on servers by discussing the possibility that a packeting engine 1707 may fail, and that packets could then be sent instead to packeting engine 1708. But Xu is teaching that a fail-over management device 1797 recognizes the problem in a packeting engine, whereas a separate DNS system 1799 performs domain name resolution. Xu paragraphs 0191, 0195.

By contrast, claim 1 of the present invention provides a "connection-sensitive domain name resolution device". Claims 8 and 13 likewise combine attention to connection status with domain name resolution such that **the domain name resolution depends on connection or path status**. Applicants and Assignee respectfully submit that such dependency is not taught by Xu.

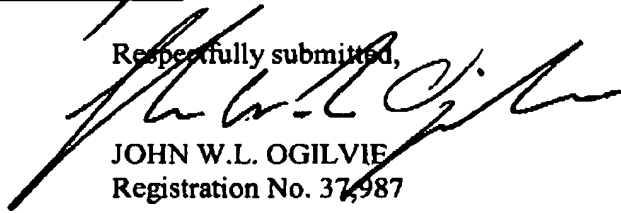
Conclusion

In light of the above, Applicants and Assignee respectfully submit that all pending claims are allowable. They request that the rejections be withdrawn, and that the claims be allowed and passed to issue. Their silence here does not signify agreement or acquiescence in the Office Action's assertions, and they reserve all arguments. In particular and without limitation, they note without further comment at present that the Office Action provided no evidence of a suggestion or motivation in the prior art to combine the Xu and Mogul references.

If any impediment to the allowance of these claims remains after entry of this Response, the Examiner is strongly encouraged to call John Ogilvie at 801-566-6633 so that such matters may be resolved as expeditiously as possible.

DATED this 20th day of February, 2004.

Respectfully submitted,


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